

**PUBLIC WORKS & TRANSPORTATION COMMITTEE  
of the  
Suffolk County Legislature**

**Minutes**

A regular meeting of the Public Works & Transportation Committee of the Suffolk County Legislature was held in the Rose Y. Caracappa Legislative Auditorium of the William H. Rogers Legislature Building, Veterans Memorial Highway, Smithtown, New York, on **September 11, 2002.**

**Members Present:**

Legislator Joseph Caracappa - Chairman  
Legislator Brian Foley - Vice-Chair  
Legislator Angie Carpenter  
Legislator David Bishop  
Legislator Andrew Crecca

**Also in Attendance:**

Paul Sabatino - Counsel to the Legislature  
Phyllis A. McAlevey - Aide to Legislator Caracappa  
BJ McCartan - Aide to Presiding Officer Tonna  
John Ortiz - Budget Analyst/Budget Review Office  
Ray Zaccaro - Aide to Legislator Bishop  
Nicole DeAngelo - Intergovernmental Relations/County Executive Office  
Charles Bartha - Commissioner/Suffolk County Public Works

**Department**

Richard LaValle - Chief Deputy Commissioner/SC Public Works

**Department**

Ben Wright - Director of Sanitation/SC Department of Public Works  
Bill Shannon - Director of Highways/SC Department of Public Works  
Michael Kaufman - Coastal Management Commission of Nissequogue &  
Head of the Harbor  
Joel O'Connor - Coastal Management Commissioner of Nissequogue &  
Head of the Harbor  
Richard Lange - President/NYS Association of Cleaners And  
Transportres of Septics

**Minutes Taken By:**

Alison Mahoney - Court Stenographer

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(\*The meeting was called to order at 11:41 A.M.\*)

**CHAIRMAN CARACAPPA:**

Okay. We're going to get started with the Public Works & Transportation meeting. We'll start with a salute to the flag led by Legislator Foley.

## Salutation

Before you sit, of course being the anniversary of the terrorist attacks on our country, I ask for you to remember those who had their lives taken that day as well as those who gave their lives, and there's a distinct difference. Those who gave their lives of course were the firefighters, the police officers, the EMS workers and those individual civilians who ran to the aid of other people who had really no business to be around those Trade Centers that day but looked just to help in any certain way that they could who also gave their lives rescuing others.

I'd ask you also to not only reflect on the day and the year that we've had, but to look forward to the years to come and hopefully it will be a state of renewal and new spirit in this country. So I'd ask for a moment of silence.

## Moment of Silence Observed

Thank you. Okay, we have two cards, three cards. Actually, we should have four cards, and we do. The first speaker, and it's relating to Resolution 1989, is Mike Kaufman.

MR. KAUFMAN:

Thank you, Mr. Chairman.

CHAIRMAN CARACAPPA:

Mike, why don't you come on up to the table here and take a seat there, turn on the microphone.

MR. KAUFMAN:

Thank you. Actually I have some handouts to give to the committee.

LEG. CRECCA:

Mr. Chairman, if before the speaker speaks, and I know it would be out of order, but if I could just sort of give an update of where we're at on this, since I've been working on it with Legislator Nowick. Just so that maybe the comments are even more directed on point to where we're at; is that all right?

CHAIRMAN CARACAPPA:

Certainly.

LEG. CRECCA:

I just wanted to say, we have sat down with representatives from Public Works, Mr. Shannon and people from the County Exec's Office, to sort of discuss this project, and it is my intention at this point to be tabling the actual dredging bill that's before us. However, I think it's still appropriate that we get comments because I believe

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that we're going to have a CN on a resolution, and that's still in the works, that will start the process with, what do they call it, hydro --

MR. SHANNON:  
Hydrographic survey.

LEG. CRECCA:  
Hydrographic survey; that's a big word for me this morning. So it's still appropriate that we do hear comments about it. Thank you.

CHAIRMAN CARACAPPA:  
Mike, before you go forward, the gentleman sitting beside you, Mr. O'Connor is it?

MR. O'CONNOR:  
Yes.

CHAIRMAN CARACAPPA:  
Okay, just so I have your card. Go head, guys.

MR. KAUFMAN:  
Mr. Chairman, Members of the Committee, my name is Michael Kaufman. I am a member of the Coastal Management Commission of the Villages of Nissequoque and Head of the Harbor. The subject matter today is dredging in Stony Brook Harbor and outside of the harbor. To my right, your left, is Dr. Joel O'Connor, he is a Marine Scientist formally with EPA, he is also a member and present Chairman of the Coastal Management Commission of which I'm a part.

I thank Mr. Crecca very much for talking about tabling this bill. I also understand, as he said, that a hydrographic survey will be undertaken, I think that that's a very necessary first step in finding out exactly what is happening in the harbor. Nonetheless, there are some concerns that I think this Legislature should be made aware of in that it is the authorizing body in terms of finances and it also is the authorizing body in terms of allowing dredging possibly to go forward in the area.

Before you I have handed out a map of Stony Brook Harbor with the letters A, B, and C on it, and also there is a second handout which I'll get to in a couple of minutes. Stony Brook Harbor right now has two channels that are presently dredged. The letter A is the Porpoise Channel, it's about three or four thousand feet long, dredged to a depth of about six feet, about a hundred feet wide. And B is the Stony Brook Yacht club Spur, that's also dredged to a depth of six

feet, it's about a hundred feet wide. Those two connect in the southern mouth of the harbor near the intersection with West Meadow Creek which is not marked on there.

Towards the top, this is an older map, it says location of project and there's a -- looks like a little L which is to the north of Stony Brook Harbor, partially that encompasses where the proposed action is supposed to take place. No one really knows at this point in time where the dredging is supposed to occur, this was a 1980 concept that you have before you but it does show the various relations. Right now

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Channels A and B, the Porpoise Channel and the Yacht Club Spur, are, as I said, maintenance dredged. The outer channel has never been cut; despite people saying to the contrary, there is no record out there whatsoever of it ever having been dredged. I think that that's a necessary predicate to understanding what is going on in there. Stony Brook Harbor is essentially a shallow draft harbor, it's difficult to enter, it's difficult to navigate in, it's not really meant for larger boats or anything like that. It's hard enough, frankly, just to keep it open for smaller boats, it's literally a shallow draft harbor. And it's a State declared significant Coastal Fish and Wildlife Habitat of statewide significance, which is something that's very rare on Long Island and is often -- actually always given the highest state protection in the area.

this My Coastal Management Plan governs quite a lot of what happens in

area. In fact, the Town of Smithtown, the Federal Government, New York State and the two Villages of Nissequoque and Head of the Harbor have a joint Coastal Management Program covering Stony Brook Harbor and also governing all dredging. All these levels of government have agreed to abide by this Coastal Management Plan. It's an integrated plan, wherein the village, State and Town and Feds have all analyzed and agreed jointly on how to run this harbor, it's a modeled intermunicipal plan copied around the State. And the reason for this plan, at least in part, for being is we're trying to manage this harbor on a scientific basis. It happens to be the most intensely studied area on the north shore, it's the home waters of the Marine Sciences Research Center at Stony Brook University and they're just a hop, skip and a jump away and they come down and write lots of fun reports in the area.

Basically we have a very detailed and intricate management plan and dredging is very closely looked at. This Coastal Management Plan also provides binding decision making standards for all levels of government to follow. The basic conclusion of this management plan is that the outer channel is supposed to be left alone and the interior channels, A and B, are supposed to be severely limited in terms of

what can be done over there, it's limited interior dredging. That, again, is because Stony Brook Harbor is a shallow harbor, it's hard to maintain and there's a lot of valuable resources in there. The Town of Smithtown and the villages have, in fact, agreed to shift marine development to the Nissequoque River to protect Stony Brook Harbor since the Nissequoque River is easier to maintain. Our management plans between the town and the villages and the State focus on leaving Stony Brook alone because the science says the dredging leads to unintended consequences.

Also, this proposed dredging of the outer channel simply cannot meet our management plan's standards and also the hydraulic models for operation of the harbor that had been studied in the area. In fact, a full hydraulic analysis is required, both the Town of Smithtown and my two villages, before any dredging is done, and in fact the Town of Smithtown did not do this before asking for authorization and requesting dredging to occur.

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We're not operating in a vacuum here. There's a lot of science and these hydraulic models that I've referred to. The first one of them is from 1985, Marine Sciences Research Center by a gentlemen named Mr. Park, it's the Prediction of Title Hydraulics in Sediment Transport Patterns in Stony Brook Harbor. It's a predictive model made part of my management plan and binding upon the town and villages

and the State which actually is supposed to be run in the computers. It looked at six dredging plans. The result is that -- the conclusion was that all dredgings of deeper than six feet or of the outer channel would increase the title range within Stony Brook Harbor, it would leave the harbor empty at low tide, it would reduce the flushing action of the harbor leading to increased pollution. It would also lead to -- counterintuitively lead to siltation everywhere of the harbor. We would end up with sand on the incoming tides coming in

and not being washed out, we would have sand bars forming everywhere, we would also have loss of marsh, loss of habitat and the State would get very mad.

We also have a 1999 study, a massive one, where the State funded an enormous amount of money to the Marine Sciences Research Center. It was performed in part by Dr. Larry Swanson who is a member of CEQ and

that was the study of the title Hydraulics and Hydrography of the Harbor. It came to the same conclusion, that increasing channel geometry leads to greater interior siltation, sand bars everywhere, massive loss of habitat and marshes. Basically, if you increase the channel geometries, you increase the width and the depth of those

channels, those channel will actually fill in much faster than anyone can actually believe because you're simply allowing much more sand in there.

There's also other studies by Gary { Zarillo} , for example, Sedimentation Analysis, Flush and Characters of the Harbor. What it boils down to is the harbor empties at low tide if you enlarge the channels inside or at the mouth. You can't, as I said, flush the contaminants out if the channels are too large. The tide frictions, the tide velocities and the tide coefficients work together so that everything basically stagnates. I've talked about marsh and habitat loss which is not supposed to occur in a park setting like this with these State protections in there. But the most frightening part about it is that if the mouth of the harbor is disturbed, there's an underwater damn there right now, it's called a rill, that's a scientific name for it, which is right next to the proposed area of dredging. That rill serves as an underwater damn, it basically prevents sand from infiltrating in. If this rill is disturbed, etcetera, nothing is -- the sand bars are simply going to march right down the harbor mouth and fill in the channels immediately and that's a problem we have. We've got a fair amount of documentation on that, the studies, I've got documentation on what the studies say, etcetera.

The other problem is that the outer channel cannot be stabilized and will refill. I point out the December, 1994, dredging wherein a storm came in and we lost half of the interior channel, Porpoise Channel, we just dredged it to six feet and we lost it, mere days, I think it was 10 days after the first dredging was done. The Army Corps of Engineers refuses to dredge out here, they also maintain that there's no permanent solution. My management plans also states that -- and

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these are binding upon the town, the State, the Federal Government  
and

my villages -- state that this area is excluded, the outer mouth, outer channel excluded from dredging since the cutting will impact the environment negatively. The hydraulic studies also say no because of the serious impact. Dredging -- simply a new channel is simply not compatible with this and the program also says that only existing channels that have already been cut can be dredged. And again, the Town of Smithtown has agreed to follow these conclusions of the Coastal Management Program which is why it's a little bit mysterious to me as to why this suddenly has come up. But again, this is dealing with plans, plans change, etcetera, but the science doesn't.

There's another point that I think should be brought out.

LEG. FOLEY:

Can I ask a question?



CHAIRMAN CARACAPPA:

Before you go on, Mike, there's a question from a committee member.

LEG. FOLEY:

So with all the background you're giving us, to cut to the chase, is it that you're opposed to the dredging of the area, or germane to the resolution and germane to what Legislator Crecca is talking about? What is it that we're doing here, either today and/or next Tuesday -- next Tuesday is going to be a resolution to do what, Legislator Crecca?

LEG. CRECCA:

It looks like, and I don't want to commit a hundred percent to this, that we're going to do a CN to start the hydrographic surveys.

LEG. FOLEY:

All right. So there won't be any dredging per se done --

LEG. CRECCA:

Exactly.

LEG. FOLEY:

-- until the surveys are done.

LEG. CRECCA:

Yes. In looking into this, there's already been approval from the Screening Committee years and years ago.

LEG. FOLEY:

I was going to ask that question.

LEG. CRECCA:

Well, actually I became aware of this, that the Screening Committee approved it back in 1977 or 1981; believe it or not, that's still a valid --

MR. KAUFMAN:

I have a question as to whether that's valid.

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LEG. FOLEY:

What we can do --

LEG. CRECCA:

I know, but whether it is or it isn't doesn't matter.

LEG. FOLEY:

Through the sufferance of the Chair, what we might be able to do at

some point is to have the Commissioner step forward because when I was

chair of the committee, of Public Works and thereby also a member of the Dredge Screening Committee, we had discussed this in the late 90's, mid to late 90's. There was a proposal at that time by the Town of Brookhaven, not by Smithtown but by Brookhaven, and the concern there was the depth of the dredging would have caused a stronger current to run through the area which then would have caused erosion problems. So at some point during this committee meeting, if we could also hear -- through the Chair, we could hear from the Commissioner's office on this.

MR. KAUFMAN:

Yeah, your recollection is accurate.

LEG. FOLEY:

Whether the Dredging Screening Committee had also approved -- we approved something back in the 90's.

MR. KAUFMAN:

Actually you denied --

LEG. FOLEY:

We denied one but --

MR. KAUFMAN:

-- to do West Meadow and you said okay on doing the Yacht Club and the Porpoise.

LEG. FOLEY:

I think what we were awaiting was for the --

MR. KAUFMAN:

For the swanson study.

LEG. FOLEY:

Yeah, for the bytown study to be completed, so to use the phrase a wholistic view could be undertaken for the whole harbor.

MR. KAUFMAN:

Yeah, essentially that study has come out, that's a 1999 study and it would basically tend to say no to doing West Meadow Creek. There's -- if I may continue.

This committee should be aware of something. This is not necessarily an emergency. The conditions that are being talked about today are basically the same since 1837 and I have, in fact, some of those maps before you. There's a report out by Marine Sciences saying -- it's looking at the entrance channel hydrography -- a tough word to day --



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from 1837 to the present and it shows that the channel has been the same as it is today. It's a small entrance, very shallow. And as the history of the area says, the harbor has always been difficult because of sand bars which extend across the channel, and another history points out that boats have always had to wait for the rising tides to enter.

The maps that I gave you, the first one is from 1837, page one of that shows title flats surrounding the harbor and showing a very narrow entrance channel. The second map from 1837 shows entrance depths at two to four feet. The third map is from 1875, it's a {noah} survey detailing one to four feet in that entrance channel; in other words, nothing has changed in 140 years. The fourth page is two aerial photographs showing sand bars from 1937 and 1960 in the entrance channel; it shows the sand bars are marching across there all the time. The fifth page shows how and why they're showing up there, the long-shore currents basically are converging at the mouth of the harbor and are depositing sand over there. I was not able to bring this last one in, but Professor Swanson's hydrographic survey from 1999 I believe also shows a number of bars in the entrance channel at low tide and very minimal depths.

Boaters for 120 years here and longer have lived with these shallow depths, when it was a boat building area, etcetera, and for the last 50 years. They simply come in at the higher tides or else they wait, they don't try and jam their way into the harbor because this channel is simply blocked by sand bars most of the time.

Now, there's one -- a couple of other points. The issue of cutting this outer channel has been going on for 120 years, this precise issue and it's never been cut and there's been a great amount of controversy over it. Partly it is, in fact, this controversy is responsible for the formation of villages of Nissequoque and head of the harbor. The Town of Smithtown in the past has often opposed this dredging. Unfortunately, the issue resurfaces every 20 years until everyone realizes that dredging is not the greatest idea in the world.

In 1880 the first proposal to the Federal government to cut the entrance came in, it was never done. The residents wanted to end the shoaling of the entrance harbor, at the entrance to the harbor and said the entrance would soon fill in; sound familiar? In 1909 the Feds refused to cut, it's too hard and they can't stabilize the outer channel. Local residents sited filling up of the harbor and filling up with the entrance channel is the reason. The Federal Government said that the 1837 survey showed it had been stable for 90 years. In 1912 the Feds say the outer channel will not hold, Smithtown agrees. 1927, there's a proposal to dredge the outer channel. Stony Brook Harbor Association and a number of residents from Nissequoque and Head of

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Harbor fight it; 1938 -- oh, that battle was won, nothing happened. 1938, same battle. 1940's, same battle, town and the County both say they will not cut the entrance, it won't hold; 1952, same issue, there's no cutting done. 1967, same thing. 1973, boaters request entrance to be cut for easier access. They say that the depths over there are three feet or less, it's a hazard to navigation, there's no access in public safety. The project doesn't go forward because nothing has changed in the area. 1979 and 1980, there's a proposal

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made by the County which Legislator Crecca has wherein the County proposed to dredge the outer channel. The Town of Smithtown, in fact, opposed that particular dredging and rejected the County's environmental assessment forms, etcetera; there, in fact, was court cases over that and the Town of Smithtown never issued a permit.

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the Yacht Club spur interior was cut, not the outer channel, okay. The Town of Smithtown, in other words, and the villages and the State have had a lot of problems with the exterior dredging of the channel for 120 years, since 1880. This issue comes up all the time.

A couple of other points. These are technical, this is within my area of expertise, I deal with SEQRA all the time. Bluntly, to cut this outer channel you would need to do an environmental impact statement.

The villages, State and town did an EIS of the area in 1987 which was finished in 1990 and the results were incorporated into the Town of Smithtown and the village's management plan and standards were set forth for the dredging. What it boils down to is when an EIS and a management plan say don't dredge because impact is probable and they

identify the problem, in this case the outer channel, then you have to do an EIS to vary the original EIS; you just can't authorize new work at variance with an established EIS. Frankly, this work is a Type I because of its extent, it's also a Positive Declaration under SEQRA 617.7, and I can give you all the sites but often I bore myself with looking at these sites so I won't do that to you. But basically, if there's a material conflict with an area that has an officially approved management plan, it's an EIS.

Now, a couple of little points that nobody knows about. There's a County dredge EIS out there, it was started in 1996, it was done under the auspices of SEQRA; it's not finished, I believe it's at Cashin Associates right now. I don't believe the outer channel is within the EIS parameters. And as I understand New York State SEQRA Law, you cannot initiate new projects wherein you are working on an EIS and the ambit of the EIS until that EIS is done; you can't do an exception or anything like that. You can continue with authorized work, etcetera,

but that's outside obviously the ambit of this dredging plan.

You should also know that in '77 and '79 a Comprehensive Nassau-Suffolk Regional Dredging Sub-Plan as prepared and adopted by the Regional Planning Board was made part -- was developed, it was made part of the Master of Federal Coastal Zone Management Program and

all sorts of other acronyms. Basically it was adopted by the County, it was adopted by the Feds, adopted by the State and the Town of Smithtown agreed to it, as did the Regional Planning Board, etcetera. And they all -- that plan says that the outer channel under discussion today is not supposed to be cut because of the environmental impacts and because it simply won't hold. Basically, that particular plan put in that dredging should only occur on existing navigation channels that have previously been dredged. New dredging of new channels was severely, severely frowned upon, they didn't want to disrupt previously undisturbed bottoms and Stony Brook was one of these particular areas.

Finally, the 1979 and 1980 permits that the State DEC issued. The County applied for these DEC permits. Smithtown, as I said, objected to them and they wrote summonses and there was a lawsuit, they never

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issued their town permits, etcetera. I'm not sure the validity of those particular permits, especially given the coastal management plans in the area which may have subsumed that particular permit, so I'm not sure that they are fully effective at this point in time.

CHAIRMAN CARACAPPA:  
Mike?

MR. KAUFMAN:  
Yes.

CHAIRMAN CARACAPPA:  
I'm going to cut you off right now.

MR. KAUFMAN:  
Absolutely.

CHAIRMAN CARACAPPA:  
The information is valuable, we appreciate it. I know you -- with relation to -- I have to read it so I get it right myself -- the hydrological survey; I didn't even have to read it, hydrographic survey. You're --

MR. KAUFMAN:

I fully support that.

CHAIRMAN CARACAPPA:

You fully support that as a first step and moving forward. And of course, if anything else were to come past that with relation to a dredge of any sort, of course it would come back to this committee where at that point any opposition or the people in favor it would -- that would be the time. So I think you made your point perfectly clear and we appreciate the back up.

Mr. O'Connor, I'd ask you, could you possibly have anything further to add on top of the expert testimony that Mr. Kaufman has given us.

MR. O'CONNOR:

No, I don't think I can add to what Mike says.

CHAIRMAN CARACAPPA:

You agree.

MR. O'CONNOR:

I agree, certainly.

CHAIRMAN CARACAPPA:

Thank you.

LEG. CRECCA:

And I thank them for coming down today and sharing the information with us, certainly we'll keep you informed as we move the process forward. But I just would note that it is something we have to look at seriously for some of the concerns you raise, but also for the concerns of boaters and the inability to get emergency vehicles in and out. So that's why we were taking such a hard look at it and Public

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Works is working diligently with us and the town, both towns, Brookhaven and Smithtown, to address the problems and also address the concerns.

MR. KAUFMAN:

Okay. Mr. Chairman, thank you very much for your time.

CHAIRMAN CARACAPPA:

I have a question, actually. Brian or Michael or Andrew, we have two windows basically to dredge, talking about the year. When -- if we're going to start the process and slowly work our way towards a solution here, when would be the time frame for the dredge with relation to the season or the open windows environmentally speaking?

LEG. CRECCA:

The first window runs through September 15th and November 30th, I understand. The reality of this dredge taking place during that time period is almost impossible because of the permits that would be needed to get. We are looking at if there was to be a dredge, we're probably -- a more realistic timetable would be the spring, and I don't know the exact window there. Brian, do you know the window in the spring for the Stony Brook Harbor?

LEG. FOLEY:

I think it would be --

LEG. CRECCA:

We don't even --

LEG. FOLEY:

We can also have Public Works come up because this is going to be a very involved process. Even before we can vote on it, if we could have Public Works step forward, this would have to be revisited by the Dredge Screening Committee. Because as I said, this was turned down back in the late 90's, at that time because the process wasn't complete, the two townships were still working on a plan.

MR. KAUFMAN:

By the way, the dredge window is --

LEG. FOLEY:

And plus -- if I just may finish.

MR. KAUFMAN:

Oh, I'm sorry.

LEG. FOLEY:

Also because that committee is the gatekeeper, there has to be demonstrated to that committee, even before we can look at it, what particular public purpose is being served with this particular proposal. So perhaps through the Chair, to answer your question, if we could hear from the Commissioner about the process.

COMMISSIONER BARTHA:

We don't know what the window would be on this particular project since we don't have any permits for it as it's not been dredged

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before. The windows on the inside of the harbor are extremely restrictive and it's only a short period in the fall, I believe it's from September 15th to November 15th approximately. So as Legislator Crecca said, there's really no chance it's going to happen this year. We have to have the surveys done, we have to go to the Dredge

Screening Committee, we have to get all the permits, so it's just not going to happen this year.

MR. KAUFMAN:

Just to answer the question that was raised, the spring periods we don't like to do when there's a lot of biological problems with it. But we have had a dredging in there to the south of the proposed area beginning I believe it was March 15th and extending through April 15th, it was a very tight window and I believe that there were a lot of problems meeting it because of storm activity. Basically, you really have to do it in the fall, that's when the area is less volatile and the storms don't come in. Spring is simply a much tougher time to dredge and I think Mr. Shannon is around here, he can confirm that; simply the channels just don't hold in the spring too well.

CHAIRMAN CARACAPPA:

Okay. Any other questions at this point?

LEG. CRECCA:

No, sir.

CHAIRMAN CARACAPPA:

All right, just so everyone knows, after -- if and when that CN comes Tuesday to start the process, I will be convening the Dredge Screening Committee as Chairman of this committee. So we will start looking at it from that end, too, and we'll go through this whole process once again, Mike, in that committee, where, as Vice-Chair Foley said, it's really the gatekeeper with relation to dredging projects.

MR. KAUFMAN:

If I could just get notice when that's occurring.

CHAIRMAN CARACAPPA:

Absolutely.

MR. KAUFMAN:

Thank you very much.

CHAIRMAN CARACAPPA:

Thank you. Commissioner, you just stay right there for now. Next speaker is Richard Lange. Same seat there, Mr. Lange. Thanks.

MR. LANGE:

Richard Lange, I'm the President of New York CATS which is --

MS. MAHONEY:

Use the microphone, please.



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MR. LANGE:

Richard Lange, President of New York CATS. New York CATS stands for New York State Association of Cleaners And Transporters of Septics, Incorporated. We represent the haulers within the State of New York. Now, we have a problem here on Long Island with disposal. The situation is this Bergen Point cannot meet the gallonages of the haulers in Suffolk County. This is a critical thing because the dump now closes sometimes at 12 o'clock, it closes more than half the days in the year early before it's due time, plus they open till about 5:30. Now that means if you're on the septic system and you have a problem in the afternoon and you're backing up and you need your cesspool pumped, you might not be able to get service. This would create a health emergency.

So right now we're not getting enough gallonages for disposal. We're not getting equal access for disposal because the County goes in with their sludge from treatment plants at any time they want and we don't have the same access. We have an unequal fee structure for disposal, the County pays less of a fee so if they do an apartment complex, they took over the package plant, they pay a lesser fee than if an outside hauler had done it. And we also have a problem with charging a 10% service charge for late payments per month. If we're a day late and you have a \$5,000 bill, you have pay a \$500 late fee for one day late. These are the concerns to our industry.

We just had recently, the Commissioner issued a letter in August 20th to stop accepting grease within Suffolk County. This was the only outlet within Suffolk County to legally dispose of grease, this means if you have a restaurant with a grease trap or within the sewage district, Southwest Sewer District, you pump it and service it on a regular basis and show proof to the County that you had that serviced, Bergen Point is saying they would not accept it. They gave it a closing date of September 7th which didn't give us any time to prepare what to do with these customers and provide service to them.

We had a meeting with the Commissioner and his staff on Monday, they gave an extension to November 1st, still not giving enough time on this. The problem is the Commissioner said right off the bat, you can take it to New Jersey and get rid of it. Well, to take it to New Jersey, there is a treatment plant that will accept it but the State of New Jersey has an application that's about an inch thick and it takes six months to a year if everything goes easy and it will cost you about \$15,000 to get that.

Now, other people have been trying to work and make alternatives on this but this is a problem. And what needs to be done is to take Bergen Point and preprocessing at Bergen Point with either an outside contractor or alterations to the plan to allow this. Basically with this problem, if the County cannot meet the needs, it should turn

around and stop all building permits to be issued until they can meet those needs. They have a responsibility if they create building permits to increase the number of septic systems or grease traps and there's no place to get rid of it. I think the County should declare a health emergency and stop all building permits until they provide a solution to get rid of this.

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Under the Clean Water Act, the EPA has issued guidelines where you are supposed to do regular maintenance and upgrade the systems. There's no help with Suffolk County. The Health Department keeps no track of servicing the grease traps, they don't care whether it's done or not, no inspection. There's not enough gallonages to do regular maintenance, they say -- the Federal government says every two to three years you should have it serviced so you don't have a problem with your system and pollute the groundwater. Now, we have an unusual type situation here on Long Island, we don't follow the State code for installs under 75A. We have an exception to do that, we use cesspools. The rest part of the State called leaching pits, they all criticize Long Island because we don't have that procedure that they have where they use leach fields. And right now we have a major problem with disposal and something has to be done.

About 15, 20 years ago we got the Suffolk County Legislature, and your mother was part of that, gave money to look and make extra disposal because we had the problem for a long time and nothing has been accomplished as yet. Now, Public Works is working on Yaphank but that keeps on getting pushed off on its time. The presentation has been given to you on that, it keeps on going off continuing later and later, but we're in a desperate situation. We need to work out something and I -- my answer is to stop the leachate from going to Bergen Point, Charlie Bartha has indicated that he had a problem with a lawsuit at the time, I think it was back in 1994, I haven't researched the whole thing as yet. Also the plant he says was not designed to take grease; well, it wasn't designed to take leachate either. It also wasn't designed to take sludge from the package plants.

We need to do something immediately and work in a very positive sense.

Now, under the Clean Water Act there's a lot of money available on the Statewide and I was willing to help the County or the Department of Public Works to work that out because I happen to sit on the Non-Point Source Committee in the State of New York. And this is not just Suffolk County with problems of disposal, I have haulers around state that have problems with disposal.

So basically what I was trying to do today is makes aware of the problems of the haulers and right now is the grease but we also have to have more gallonage. You try to tell a restaurant owner it cost you less than \$100 last time to clean your grease trap, now it's going to cost you 450 or \$800 for the lousy pumping because of the disposal situation and something has to be accomplished.

CHAIRMAN CARACAPPA:

Legislator Bishop has a question before we go any further.

LEG. BISHOP:

I have advice. I represent the Babylon District in which Bergen Point is located and the system has always seemed rather archaic and dysfunctional to me in that hundreds of trucks a day amble through the streets of Babylon all carrying sewage from out east. So it means for the companies and the residents, they have to pay for that service, the companies have to charge for that service and local residents have to endure all those trucks. It seems to me logically that we would

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want to have some sort of plant out east to accept the scavenger waste which would be more efficient, it would be better for consumers, better for the companies, better for the environment. We wouldn't have to have hundreds of trucks, you know, spewing exhaust every day traveling 20, 30 miles to --

LEG. FOLEY:

NIMBY.

LEG. BISHOP:

Well, that's just the attitude. And I appreciate it, I understand where you're coming from. He says go to Patchogue; right, Brian? Brian represents Patchogue. Nobody wants it in their backyard. Now, how do you get past a NIMBY problem? Well, you can't do it with one advocate like yourself, even though you're representing a consortium, you really have to come down with your member groups enforce, all the employees have to be aware of this issue, all the employers have to advocate and show some strength so maybe we can break through this NIMBY gridlock and get something built that will serve all of Suffolk County rather than go on with this dysfunctional system.

MR. LANGE:

Well, I'm ready to line up the trucks, I did that for Charlie once. I lined up the trucks, he didn't appreciate it.

LEG. BISHOP:

You should just go to Charlie's house.

MR. LANGE:

But I have a solution. I have some solutions for you.

LEG. BISHOP:

Okay, let's hear them.

MR. LANGE:

The Town of Babylon has taken it upon themselves to make a manhole available in their yard and took their own leachate and disposed of it in their own yard which stopped them from going down to Bergen Point. The Town of Islip, we've had meetings with them trying to get them to do that.

LEG. BISHOP:

Where is their yard, Babylon's yard?

MR. LANGE:

They have one by Town Hall.

LEG. BISHOP:

Oh, it's a half mile from the plant.

MR. LANGE:

That's the idea, the trucks don't go down Bergen Avenue and it makes it easier and it helps out the plant. Now, the Town of Islip, we tried to get them to do that because they have manholes that they can use in their yards, they don't want to do it.

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LEG. FOLEY:

Why not?

MR. LANGE:

It's easier this way.

LEG. FOLEY:

Well, if one township is willing to do it, the Township of Islip their manhole is -- is it near a municipal yard, is it in the middle of a residential area, is it in the commercial area?

LEG. BISHOP:

By the way, does Babylon open it up for your members or just for their own vehicles?

MR. LANGE:

For their own, it's for their own.

LEG. FOLEY:

No, but it helps -- as the gentleman says, though, it helps because it

reduces the number of trucks.

MR. LANGE:

Right, they took an active part and I appreciate that.

LEG. FOLEY:

All right.

MR. LANGE:

The Town of Islip, we went and met with them and trying to get them to do it and they're the ones that Suffolk County Department of Public Works.

LEG. BISHOP:

There should be something right off the Expressway.

LEG. FOLEY:

Where in Islip -- through the Chair, where in Islip did you suggest?

MR. LANGE:

They have a couple of places. I'm not an expert on the Town of Islip, I have other members that are -- that went with me; I have a problem with memory so I can't remember all those things.

LEG. FOLEY:

That's all right.

MR. LANGE:

But they do have the capability and they did it for the study but they didn't do it.

LEG. FOLEY:

Was it the Liquid Waste Haulers Association, they went to the Supervisor of the Town?

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MR. LANGE:

Yes, Long Island Liquid Waste which I'm on the Board of Directors of that.

LEG. FOLEY:

Right.

MR. LANGE:

Yes, and that's a possibility. The other thing is the Town of Babylon, as far as going to Bergen Point, is required the County trucks taking sludge from all the package plants and dewatering it at the package plant eliminated the trucks coming down there, that would eliminate the trucks and it would take a load off of Bergen Point as

meeting discharged as well because it wasn't intended to take that. But a simple thing, the leachate is real simple. Even if the Commissioner could effectively get the Town of Islip, even take it to Babylon and momentarily use it there, or to get DEC to say, "Hey, look, you can't take it there anymore, you have to do it that way," but I haven't found any DEC person willing to take the heat on that, but there's ways to eliminate that. And what I'm saying here, it has to be looked at. I'm willing to bring other people down here with me to do this.

I have been in front of this commission when others were here, when Rose was here and Sandra Bachety, everybody else was here at that time, that was a long time ago. But now I need to get this accomplished because we have a major problem. I'm willing to sit with anybody and discuss it.

LEG. BISHOP:  
Bring out the troops.

MR. LANGE:  
If you want the troops here, you tell me when, I'll have the trucks all down here.

LEG. BISHOP:  
As soon as possible.

MR. LANGE:  
If you go down to Bergen Point --

CHAIRMAN CARACAPPA:  
What is it, Brookhaven Caper?

MR. LANGE:  
Sometimes you have the trucks lined up there so far all the way out to the gate.

LEG. CARPENTER:  
They should take the trucks to the town board meetings.

CHAIRMAN CARACAPPA:  
Yeah, that's a good idea, take all the trucks to town board meetings and empty them.

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LEG. BISHOP:  
Wouldn't the logical place be -- if we were completely objective and not cognizant of our local concerns, you would logically put this plant in Yaphank right off the Expressway.



MR. LANGE:

Yes, there is one to be scheduled, Charlie can tell you about that.

LEG. BISHOP:

That's a perfect site.

MR. LANGE:

But that's being put back farther and farther, that's only 200,000 gallons. What we really need --

LEG. BISHOP:

What about a pipe at Pilgrim State right off the Expressway, that would also --

MR. LANGE:

That leads to the second problem. The second problem is gallonage has been reserved for other people and that one has been reserved. There is a place hook in there, we have a location of property to put a treatment plant in there, but gallonage has been reserved. Now, that's why I was asking, with the reserve of a million gallons a day for the septic disposal, that's what we need.

LEG. CARPENTER:

I have a question.

CHAIRMAN CARACAPPA:

Legislator Carpenter.

LEG. BISHOP:

It would be all the people in the sewer district who paid for it.

LEG. CARPENTER:

When you --

MR. LANGE:

Actually, the septic people helped to pay the people in the sewer district because the funds left over for the disposal fees are being given over to the sewer district or to the General Fund. We would like to see the funds remain with the scavenger plant so any updates or financial requirements for maintenance are there with that money.

LEG. BISHOP:

The plant was constructed with funds from within the district.

MR. LANGE:

We pay --

LEG. BISHOP:

And it would be a shame if the people within the district were locked out because we expanded capacity for those outside the district before

taking care of those who paid for it.

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MR. LANGE:

Yeah, but the same token, a quarter percent sales tax equalization fund and all the sewer districts aren't paying the fair amount. I don't know if you're aware of it, but they're underfunding the account and they use the Equalization Fund to balance that out.

LEG. BISHOP:

We need to know more about that. We'll chat afterwards.

MR. LANGE:

Okay.

CHAIRMAN CARACAPPA:

I want to go back to the grease question.

MR. LANGE:

Yes.

CHAIRMAN CARACAPPA:

That's really what started all this.

MR. LANGE:

Yes, that gives the deadline.

CHAIRMAN CARACAPPA:

Charlie, Bergen Point was never designed to take degrease. And I know that the County mandates restaurants to install grease traps and empty them, so it was based I guess on that premise that you allowed gentlemen such as Mr. Lange and his industry to relieve that waste at Bergen Point. What -- is that the case over the years?

COMMISSIONER BARTHA:

Well, we have obviously accepted grease at Bergen Point since 1981 when we first opened. It was -- and we were able to handle it without a problem. What's developed over the last couple of years is as we've learned meeting with the members of the industry the other day, that the grease industry has changed. They used to -- besides the fact of increased growth is a major factor, but they used to be able to -- restaurants used to be able to -- they would be paid by the person who picked up the grease because it had after market uses. Then it got to the point where they would pick it up but they wouldn't pay the restaurant owner anything, and now they're charging and they apparently have made a substantial increase in the charge for disposing of grease.

What Mr. Lange is saying is really two different segments of this.

There's the grease traps that are in the district which we believe are well maintained. As part of our Industrial Waste Pretreatment and Monitoring Program, they have to, the restaurants have to give us receipts every six months to indicate the grease traps have been properly -- have been pumped. What's happening, according to members

of the industry, areas outside the sewer districts that are not under our jurisdiction that the grease traps are not properly maintained so you wind up with a mix of grease and water and a significant mix of grease and water, that's increasing the volume. If you can keep the grease separate it is easier to dispose of than dealing with the mixed

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large volume, because when you have the mixed volume you have a very large volume.

We can handle water with small amounts of grease in it and accept with small amounts of grease in it, but the grease itself is causing us very serious problems and major expenses at Bergen Point. It's causing equipment to break, it's causing tanks to be full of grease and have to be taken out of service and cleaned. We had a different process at Bergen Point when we initially went into operation. It was a zimpro process which handled grease better but it also created horrendous odors at Bergen Point; we don't have that zimpro process anymore. The treatment facility in Passaic, New Jersey that accepts the degrease, from what I'm understanding, has the zimpro process.

There are ways -- we agreed after meeting with the members of the industry on Monday morning when they explained that they are purchasing equipment that will allow them to separate and consolidate the grease better and allow them to dispose of it in alternate locations. So we granted an extension to November 1st, that we will continue to accept grease at Bergen Point provided we don't have permit violations.

CHAIRMAN CARACAPPA:

How long will it be before you have that equipment operational, Mr. Lange, to do that separation?

MR. LANGE:

It wasn't me that had -- that equipment was based on certain companies

that came in here, large companies came in here to pick up the grease and that's what causes some of the problem at Bergen Point. They used

a process where they had two tanks on a truck, one they put the solids in and one they put the liquid and they took the liquid and dumped it back into the grease trap after they separated it and did like ten

grease traps, then went to Bergen Point and gave them that concentrated load and that's what gave him the problem. The problem is to go to Jersey to drop it off over there, it's over by Newark, is to -- you have to have this whole license and it's very costly and it takes six months to a year if there's no problems, and it costs you about \$15,000 because you have to pay --

CHAIRMAN CARACAPPA:  
You had mentioned that earlier.

MR. LANGE:  
Yeah, and that's what the problem is. I asked Charlie if he could do us a favor and call the Jersey DEP and ask and see if we can do it without the Jersey permit. It's questionable whether we really have to have that permit to go just to dispose of and we asked Charlie to see if he would help us out on that because that would relieve us quite quickly going in that direction. But, you know, all these other things, if you want to build a truck to do this, you can't do it in a couple of months, all right. And the way the economy is right now, the chassis aren't available, not like before, all right?

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So we appreciate whatever you do. I also suggested to Charlie that I had a company that would come in and do a pretreatment of the grease and take the liquid and discharge into the plant and they take the grease away and do that. I talked to somebody else where they would charge the hauler coming in for his handling of the grease and they would pay Bergen Point for their discharge into their plant, they were willing to come and set that up, that's an outlet that's a possibility of doing. We were trying to help because the best thing we can do is make it easy for the hauler to do it, otherwise you're going to get illegal dumping.

CHAIRMAN CARACAPPA:  
I just want to make one point clear that you said, Charlie. If they were able to separate the grease more efficiently from the other waste, Bergen Point would have an easier time processing it.

COMMISSIONER BARTHA:  
Well, we would not take the grease still, but it allows them less trucks to dispose of it to bring it to New Jersey or wherever they make arrangements.

CHAIRMAN CARACAPPA:  
Okay, I understand. Any other questions on this? Legislator Carpenter.

LEG. CARPENTER:  
Mr. Lange, you had talked about the fact that Babylon dumps in their

manholes and we're trying to negotiate the same arrangement with Islip; what about the other towns, Huntington, Brookhaven, what about any of the other towns?

MR. LANGE:

Huntington is not a problem, it's Smithtown, they only take a small amount. They go to Kings Park, they have a small amount left over. Yes, it would be the stop-all of going into Bergen Point. Now, it could very easily -- I don't think the Town of Babylon, if they could make it more efficient for them and make some money, they dump in theirs, I don't see why they would object to it. But that's what needs to be done, because that plant was not designed to take leachate or sludge from these treatment plants.

COMMISSIONER BARTHA:

It absolutely was, okay. And with respect to the leachate, just to keep you on the mark, all that will do if Islip were to arrange to discharge their leachate into a manhole, it would not solve the capacity problem, it would not solve the grease problem, all it would do is reduce the amount of truck traffic going down Bergen Avenue.

MR. LANGE:

If you ever saw the line at Bergen Point, it's not busy on Monday so much, what happens is it builds up because Sunday is a slow day, but if you go there on a Monday it starts to build up, and then comes Tuesday, Thursday, Wednesday and Thursday, then you start seeing the trucks. And then you can have the trucks lined out almost to Bergen Avenue at the right time, you'll have two lines, one for the tractor trailers, one for the straight jobs; they try to break up the line otherwise you'd be right out to Bergen Avenue.

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CHAIRMAN CARACAPPA:

Okay. Any other questions relating to this matter? Mr. Lange, thank you for bringing it to the attention of the committee. I think you and I are going to have some further dialogue in the upcoming days

I will, as well as with Commissioner Bartha, Mr. Wright, try to see if there's some of sort of plan we can come up with to at least ease the problem that currently exists. I don't know if that's possible but try and take the meeting that you had on Monday a step forward and, I don't know, try to work together on something. At this point I can't --

MR. LANGE:

I appreciate that.

CHAIRMAN CARACAPPA:

I would be lying to you to say I have an idea at this point in time, but we'll see what we can do.

MR. LANGE:

It's not an easy solution, but I'm willing to help with the State to even drum up funds for doing this.

CHAIRMAN CARACAPPA:

That is definitely a direction in which I'm already looking based on our conversation the other day on the phone and it started me thinking with direction we might go. I had a conversation with Counsel about it already and after further discussion with yourself and the department, hopefully we can find some mutual and direct direction.

MR. LANGE:

I appreciate it. Thank you.

CHAIRMAN CARACAPPA:

Thank you. The last speaker is Gene Wishod.

MR. WISHOD:

Thank you, Mr. Chairman. I appear for Fairfield Properties and to my right is Gerry Manfredi who is a representative of Fairfield.

In September of 1997, the District 11 venture which was a consortium of ten developers signed a construction agreement with Suffolk County Sewer District No. 11, Selden, the Suffolk County Sewer Agency, the Suffolk County Department of Public Works, the Suffolk County Department of Health Services and the County of Suffolk to expand the District 11 Sewage Treatment Plant by approximately a half of million gallons to accommodate the needs of the ten developers. This was a continuation of a private/public partnership that we have done in the past for sewer districts that lacked the funds to expand to meet the needs of developers and this type of agreement was arrived at whereby the developers would advance the funds and get a credit against the normal connection fee.

With respect to this particular District 11 venture, the construction agreement that was signed by the venture was approved by the Suffolk County Legislature by resolution adopted on December 16, 1997, which authorized the administrative head of the district to sign the

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proposed construction agreement. Subsequent to approval by the Legislature, the agreement was fully executed and work commenced on the expansion of the district. Three of the four construction phases of the expansion have been completed and the fourth phase which will increase the capacity of the sewage treatment plant to 2.2 million gallons is expected to be completed some time next year.



The construction agreement recognized that during the course of the project the gallonage needs of the members of the consortium might vary and change. Accordingly, the construction agreement expressly authorized, subject only to the approval of the staff of the Suffolk County Sewer Agency, transfers of gallonage among the members of the consortium or by members of the consortium to owners of nearby adjacent land. Such a transfer is before you now.

Coram Estates, which was originally allocated 46,200 gallons, had a reduction in needs for a revised project which was the purpose for the initial authorization to transfer gallonage. They signed an agreement to transfer 26,000 gallons to the Fairfield Properties Organization which is as also a member of the consortium and it's that agreement concerning a project as Fairfield, known as Fairfield at Pinewood which is in Port Jefferson Station which is before the committee now -- I'm sorry, in Coram. It's our position, since the transfer of the gallonage was expressly contemplated and authorized by the construction agreement, and since the construction agreement was approved by the Legislature in 1997, we urge the committee to approve the proposed resolution.

I have difficulty in understanding why this is before the committee and the Legislature in light of the prior approval of the construction agreement by the Legislature and the authorization contained therein to delegate to the staff of the agency any required transfers of gallonage among the members of the consortium.

CHAIRMAN CARACAPPA:  
Because this is --

MR. WISHOD:  
In the excess of caution, I assume it's been submitted to the committee and to the Legislature.

CHAIRMAN CARACAPPA:  
This is a hook-up to our sewer district, that's why it's before us. It's not a question of transferring the gallonage in the consortium and the agreement met in 1997, this is the way we do business with relation to when there's a hook-up to a sewer district, a County sewer district, it comes before the Public Works Committee.

MR. WISHOD:  
Oh, I understand that.

CHAIRMAN CARACAPPA:  
Okay, I thought --

MR. WISHOD:

No, no, I understand it comes before the Public Works Committee.

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CHAIRMAN CARACAPPA:

You just asked why is it coming before the Public Works Committee.

MR. WISHOD:

But the construction agreement was approved by the Legislature and  
the

construction agreement authorized transfers of gallonage, it seems to me it necessarily authorized further connections among the consortium members for different projects. But I'm not going to argue that point.

CHAIRMAN CARACAPPA:

But the resolution talks nothing about transfer of gallonage between the consortiums, which I have a problem with already and I brought that up in sewer agency. This is about a hook-up; correct, Counsel?

MR. WISHOD:

Yes, its about a --

MR. SABATINO:

Yeah, I'm concerned that maybe you're testifying on something different, because everything you just described doesn't tie into what I have in front of me, that's why I thought maybe there's some confusion. Because this is a straightforward, normal routine hook-up from somebody outside, but you're talking about a whole bunch of things that are not referred to in the documents I see. So maybe there's just -- you know, maybe we're voting on the wrong thing or maybe you're presenting it wrong --

MR. WISHOD:

No, no, no, we're --

MR. SABATINO:

-- or maybe there's something out there that we don't know.

MR. WISHOD:

No, we're voting on --

MR. SABATINO:

I heard your whole analysis but it doesn't sound like anything that's in front of us, that's why --

MR. WISHOD:

Well, we're voting on a proposed connection to the sewer district. I'm simply suggesting that with respect to a connection by a member of a District 11 venture for a project that involves a transfer of

gallorage previously authorized by the Legislature, I think it's in a different category than simply an outsider coming in and saying, "I want to connect to the sewer district." This is not just fashioned out of whole cloth. This particular connection, this particular request for a connection is being -- is being made within the context of the whole formation of the District 11 venture which was a public/private partnership to expand this district. I just don't think it's entirely analogous to a stranger coming in and saying, "I want to connect to the District 11 STP." I don't want to fight with the committee about whether formal approval is required or not, I'm just -- I'm just respectfully suggesting it comes to you within a

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different context than the normal request to approve a connection. That's my only point, Counsel.

CHAIRMAN CARACAPPA:

To use the word stranger coming into the venture, I think that's a poor use of words. It sounds as if you have an exclusive club through the venture and that's just the way I see it and you shouldn't use the word stranger trying to get into Sewer District 11. And I'll use the point, case in point of Catholic Charities as of recently that came before the Sewer Agency and tried to hook in with their project which was the { Cabrini } Gardens, and based on our inability to meet their gallorage because we don't have the capacity, you know, doesn't make them strangers. And I may be going off on something you were talking -- aside from what you were talking, I just didn't appreciate the language that you used.

This leads me into my question, though; gallorage; if we couldn't help out Catholic Charities and { Cabrini } Gardens, Commissioner, what makes

the gallorage available now? Just because they had it set aside or the reserved gallorage based on the other project, now it makes it available for this project at Pinewood? You know, we just turned away a low income senior citizen facility with a hook-up at 11 because the testimony from the agency was that there is no capacity at this point in time. But meanwhile we're going to sit here and approve another hook-up because they -- they arranged some sort of gallorage exchange

and now it's -- and now it's available. I just don't -- I see some hypocrisy here.

COMMISSIONER BARTHA:

We -- the { Cabrini } Gardens was a timing problem that they -- we don't have the capacity right now.

CHAIRMAN CARACAPPA:

But we have it for this one. I could stop you right there. But we

have it for this one.

COMMISSIONER BARTHA:  
No.

CHAIRMAN CARACAPPA:  
We don't have the gallonage for Pinewood?

COMMISSIONER BARTHA:  
Not right now.

CHAIRMAN CARACAPPA:  
That's -- thank you.

MR. WISHOD:  
Well, let me explain. We have the gallonage because a certain amount of gallonage was authorized for Coram Estates, one of the original members of the venture. They have revised their project, they no longer need all the gallonage, 46,500 gallons that they originally signed up for and agreed to pay for. So pursuant to the construction agreement that the Legislature authorized, they have transferred part

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of their original gallonage for which there is capacity. There is absolutely capacity for Fairfield at Pinewood.

CHAIRMAN CARACAPPA:  
Counsel --

MR. WISHOD:  
Yeah.

CHAIRMAN CARACAPPA:  
I know you're counsel, our counsel. Does the consortium have the right to do that, I guess the word would be interdependently or within their little consortium of developers, a unilateral decision amongst them, or does that transfer of gallonage have to come for approval of this Legislature, or at least the Sewer Agency?

MR. SABATINO:  
That would have to come back to the County because there would have to be a consent. The authorization -- I mean, I haven't looked at that particular document, but the authorization should have been explicit for X amount of gallonage for a particular project for a particular entity. The ability to assign and transfer rights within a legal document is always subject to the consent of the other party unless some unusual language was used in an agreement, but that consent can

only be granted by the corporate entity which is the County of Suffolk which is why this resolution is probably before you.

However, I will say that to somebody -- I mean, I'm a stranger to the transaction. Reading the documents, I never ever in a million years would have contemplated that this was taking anything other than excess or surplus capacity at the Sewer District and approving it for a particular project. So your explanation certainly added something to it, but that clearly was not in the document. That's why I was really puzzled and I thought maybe you were off on some other project.

MR. WISHOD:

May I turn the mike over to Mr. Manfredi?

CHAIRMAN CARACAPPA:

Just state your name for the record.

MR. MANFREDI:

Yes, Gerald Manfredi, Fairfield Properties. Mr. Chairman, Members of the Board, hopefully I can add a little clarity to this because I think there is a part, a very valuable part of this that is missing.

About five or six, seven years ago, there's a group of ten to 15 developers. We're putting money together in a kitty and in order to get a certain amount of gallonage, we are going to upgrade Suffolk County's Sewer Plant, District No. 11, in order to get this gallonage. So we're taking approximately 12 to \$15 per gallon, doing the improvements to the County Sewer Treatment Plant that needed it in order to gain this gallonage; in turn, we get this gallonage.

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So here are the ten to 15 developers and we're not exceeding the gallonage that we requested and the money we're paying to do this. All we're doing is just transferring some gallonage between the members.

CHAIRMAN CARACAPPA:

We understand that. But the question is, do you get to do that just on your own as the consortium or does it have to come before either the Sewer Agency or the Legislature?

MR. WISHOD:

Well, but it came before the Sewer Agency and the Legislature in 1997, we would not have expended millions of dollars had the Legislature not approved the original construction agreement.

CHAIRMAN CARACAPPA:

We understand the construction agreement. Does it say in the construction agreement that you would be able to unilaterally transfer

gallorage between developers?

MR. WISHOD:

No, not --

CHAIRMAN CARACAPPA:

When one didn't need it and a knew project such as Pinewood, we could just say bypass the Legislature and you know what, "hey, listen, Fairfield, I have so much gallorage I'm not using. I'm part of the consortium, you're part of the consortium, here, you use mine."

MR. WISHOD:

Well, I object to the term unilaterally. The construction agreement that was approved by the Legislature made those transfers of gallorage subject to the approval of the Suffolk County Sewer Agency staff. It did not make further transfers of gallorage subject to further approval of the Suffolk County Legislature, that's the distinction.

CHAIRMAN CARACAPPA:

That gallorage --

MR. WISHOD:

And to characterize the Catholic Charities as a stranger, I used stranger only in the sense that they were not there five years ago when we had to put up millions of dollars to expand the plant to 2.2 million gallons. Were they there they would have been welcomed as members of the consortium and we would have expanded the plant by

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plus 50,000 or 25,000; it's strictly a question of timing, as the Commissioner says. If there's going to be a District 11 venture two and there are other developers that need capacity, that may well happen in the future. We're not discriminating against any other developer who needs capacity in 2002 who wasn't available to contribute his money in 1997.

CHAIRMAN CARACAPPA:

Well, you say that it should have went before the Sewer Agency to transfer the gallorage; I'm on the Sewer Agency, Mr. Wishod, that was not what was discussed. Though you brought it up and you told us

what

your reasoning was for Pinewood getting the gallorage after I questioned it and you said, "Well, it's the consortium, they have the right." We voted on the hook-up and that was the recommendation of the agency to the board members who voted on it that day, not a vote



on letting you transfer the gallonage.

And Mr. Wright, correct me if I'm wrong; did we vote that day in the agency to transfer gallonage between one member of the venture to Fairfield Properties who is another member of the venture?

MR. WRIGHT:

You didn't vote on it but it was part of our evaluation before we made the recommendation to the agency.

CHAIRMAN CARACAPPA:

But it was not voted on.

MR. WRIGHT:

It was not voted on.

CHAIRMAN CARACAPPA:

So according to Mr. Wishod, we voted on it as a sewer agency but we did not vote on the transfer of gallonage.

MR. WISHOD:

I respectfully --

CHAIRMAN CARACAPPA:

You recommended it. I'm just trying to -- you know, I'm going by what you're saying here.

MR. WISHOD:

I think it's a distinction without a difference, voting on the connection which is what the agency voted on. The connection was made

possible by the transfer of gallonage which was fully disclosed to the agency in accordance with the construction agreement, namely that delegated to the agency staff approval of transfers of gallonage and necessarily connections that went along with the transfers of gallonage, so long as the transfers of gallonage in one case were among the members of the consortium who put up their millions of dollars five years ago in 1997.

CHAIRMAN CARACAPPA:

Counsel, again, you may have said it already but one more time to make it clear. With relation to transfer of gallonage, who -- who decides that and who should decide that?

MR. SABATINO:

Well, the final decision is still going to be made by a resolution of the County of Suffolk which would be the Legislature, you know, with the County Executive or without him if there's a veto override. I think, you know, looking at the document which came from the Sewer

Agency which is their resolution, I mean, its worded as just a stand-alone application which is 26,300 gallons for a particular project for planned retirement facilities. So, I mean, it doesn't even -- the language of the resolution itself, to somebody looking at

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it who didn't attend the meeting, as an outsider, it does have the look and the feel and the substance of a stand-alone application.

Now, if it was meant to be couched as a consent pursuant to some preexisting agreement that's got language in it which says transfers can be made, you know, subject to consent, I would have constructed the -- Well, the application itself would have been different but also the sewer agency resolution, you know, would have been different. And it's a distinction with a difference because I think what Legislator Caracappa is saying is that, you know, there's a multitude of potential applicants for excess sewer district capacity. I mean, everybody starts off on equal footing in terms of competing for it. And you can make distinctions and decisions between competing applicants but you have to have the same knowledge base when you're starting off and the knowledge base that I think Legislator Caracappa is talking about is that he thought there was no excess capacity when in fact there was.

CHAIRMAN CARACAPPA:

Well, there isn't according to Commissioner Bartha, there's no capacity.

MR. SABATINO:

But I think it depends on how it's couched and presented. But clearly the resolution that was approved by the Sewer Agency was not talking about a transfer, that's not the way it's worded.

LEG. BISHOP:

I just want to --

CHAIRMAN CARACAPPA:

Legislator Bishop has a question.

LEG. CRECCA:

Put me on the list.

LEG. BISHOP:

Can I claim my time? I just want to understand something. When the question is asked about capacity that remains in the plant, capacity is calculated with an understanding that the consortium has reserved whatever amount of capacity they already have, correct?

MR. WISHOD:

That's correct.

LEG. BISHOP:

Well, I'm asking the Commissioner.

COMMISSIONER BARTHA:

I would say that's not correct.

LEG. BISHOP:

Okay. That is a significant difference and we need to explore that for a minute. Why would you say that that's not correct?

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COMMISSIONER BARTHA:

Because the plant right now does not have that capacity. The consortium is increasing the capacity of the plant, making an addition to the plant in order to be able to accept that additional flow. So right now it does not have that capacity.

LEG. BISHOP:

And they're paying for the --

COMMISSIONER BARTHA:

They're paying for that. They're paying for the construction and they're expanding the plant to provide additional capacity.

LEG. BISHOP:

So Mr. Wishod, then the issue of the consortium, how did it -- how did we get to the capacity level without the consortium first getting their -- getting their capacity?

COMMISSIONER BARTHA:

Because we served everything in the district, the consortium approached the County, the Sewer Agency that they were interested in connecting to the plant, they were prepared to expand the plant --

LEG. BISHOP:

No, no, I get it from this point. I'm saying a plants was built how many years ago?

COMMISSIONER BARTHA:

Probably in the late 60's.

MR. WRIGHT:

Yeah, the last expansion was ten years ago.

LEG. BISHOP:

When did the consortium come into be?

COMMISSIONER BARTHA:  
This consortium?

MR. WRIGHT:  
1997.

LEG. BISHOP:  
Okay. In 1997 they paid for something, what was that?

COMMISSIONER BARTHA:  
They -- what they do instead of paying us is they pay for the improvements directly and if that --

LEG. BISHOP:  
But they paid for something that was supposed to yield "X" amount of gallons; how many is X.

MR. WISHOD:  
Two point two million.

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LEG. BISHOP:  
Two point two million, right?

COMMISSIONER BARTHA:  
Right.

LEG. BISHOP:  
But they didn't get their 2.2 million worth of --

COMMISSIONER BARTHA:  
Because they didn't finish their work yet.

MR. WISHOD:  
We're still working.

COMMISSIONER BARTHA:  
It's not my problem.

LEG. BISHOP:  
Oh, they didn't finish their -- okay, that's what I'm trying to understand.

LEG. CRECCA:  
We're just trying to understand, Commissioner.

MR. WISHOD:  
There are four phases of the expansion, we've completed three, we're in the process of completing the fourth.

LEG. BISHOP:

Is that what this resolution is, the fourth phase of the -- or is it something over and above that?

COMMISSIONER BARTHA:

No, it's included in the fourth phase, this capacity is included in the fourth phase.

MR. WISHOD:

But the Sewer Agency approved the connection at the present time because the fourth phase is coming on line and will replace and provide the additional capacity needed for this connection.

LEG. BISHOP:

So both answers are correct. There is not currently the capacity but there has always been the understanding, because we accepted this consortium back in 1997, that they would do as much work as to yield 2.2 million gallons and this is the final phase to get them to 2.2 million gallons.

COMMISSIONER BARTHA:

That's correct.

LEG. BISHOP:

It's not 2.5 million, it's not -- it's just simply what was agreed to back in 1997.

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COMMISSIONER BARTHA:

That's correct.

CHAIRMAN CARACAPPA:

Legislator Crecca has a question.

LEG. CRECCA:

Actually I think Legislator Bishop just asked most of the questions I was going to ask, but that was my understanding. So this is no different than what we approved in '97 then, there's no excess gallonage other than what was already agreed to as part of the improvements to Sewer District 11.

MR. WISHOD:

Absolutely.

LEG. CRECCA:

I'm really directing my comments to the Commissioner. I'm sorry.

MR. WISHOD:

Oh, I'm sorry.

LEG. CRECCA:

It's okay, no, no, I appreciate it.

COMMISSIONER BARTHA:

That is correct, it's just a different entity that is sharing in the capacity at this point.

LEG. CRECCA:

But it's not going to -- what I'm saying is that it's not going to now exceed because the other entity which they got the gallonage from within the consortium, they can't come back now and say, "Well, we want more gallonage now too," they'd have to do that separately, correct?

COMMISSIONER BARTHA:

That's correct.

LEG. CRECCA:

In other words, this is part of the original gallonage, it's just a shifting between --

COMMISSIONER BARTHA:

That's correct.

LEG. CRECCA:

-- members of the consortium.

CHAIRMAN CARACAPPA:

That's the troubling part. That's the unclear part.

LEG. FOLEY:

Yeah.

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CHAIRMAN CARACAPPA:

Who decides to say -- who wheels and deals, who says they can wheel and deal in the consortium? Is it part of the agreement that says consortium member A can call consortium member B and say, "Listen, got 20,000 gallons for you, you know, for your project over in Coram." Do they have the right to switch gallonage, the capacity like that, to shift it from project to project?

COMMISSIONER BARTHA:

Well, they can't do it without the approval of the Sewer Agency and the Legislature is our opinion.



CHAIRMAN CARACAPPA:  
We have not done that.

LEG. BISHOP:  
That's why we're here.

CHAIRMAN CARACAPPA:  
No, they didn't do that in the Sewer Agency either, that was not part of the resolution whatsoever.

LEG. CRECCA:  
In the original -- can I ask a question in that regard, Legislator Caracappa, Mr. Chairman?

CHAIRMAN CARACAPPA:  
Go ahead.

LEG. CRECCA:  
In the original agreement, was the original agreement with the consortium and the County or was it with individual members of the consortium?

MR. WISHOD:  
It was between the consortium, District 11 Venture and all the County agencies.

LEG. CRECCA:  
Again, I appreciate it, but I really want to hear it from the Commissioner. I apologize.

COMMISSIONER BARTHA:  
Yes, we agree on that.

LEG. CRECCA:  
Okay. So I would assume with the consortium that that's a contractual right that the consortium has with the County, correct?

COMMISSIONER BARTHA:  
That they have a contractual right to do what?

LEG. CRECCA:  
To a certain amount of gallonage in exchange for --

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CHAIRMAN CARACAPPA:  
To trade gallonage?

LEG. CRECCA:  
No; no, no, no. Just follow me for a second. The consortium did a

contract with the county for 2.2 million gallons. Okay. In that --

COMMISSIONER BARTHA:

Excuse me. It's to increase the plant's capacity 2.2, they don't get 2.2 million gallons.

CHAIRMAN CARACAPPA:

Ah-hah.

LEG. CRECCA:

What do they get, less?

COMMISSIONER BARTHA:

Yes.

LEG. CRECCA:

So then we're back -- that's the benefit to us is that we're getting more gallonage --

COMMISSIONER BARTHA:

No. No, the plant already had "X" number of gallons, they're increasing it to 2.2.

LEG. CRECCA:

Two point two, okay, I'm sorry. So whatever -- what was the gallonage they were increasing it from what, do you know, Ben?

MR. WRIGHT:

One point seven was the existing permit, so it was roughly 500,000.

LEG. CRECCA:

Okay. So they did a contract where the consortium was contracted for this extra 500,000 in exchange for which they would do certain improvement and invest certain dollars into the sewer plant, correct?

COMMISSIONER BARTHA:

Correct.

LEG. CRECCA:

Okay. As part of that, I mean I would ask just as a legal matter, why couldn't they -- I mean, I would assume that under the contract they could have signed their rights any way that they wanted, I mean, within the consortium itself if they're all contractual members; you wouldn't agree with that.

COMMISSIONER BARTHA:

I would have to review the contract before I answer that question. But the contracts typically have very specific gallonages for each of the entities that are involved.

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LEG. CRECCA:

Okay.

MR. WISHOD:

Would you bear with me while I just read one small portion of the agreement?

LEG. CRECCA:

Sure.

MR. WISHOD:

"The parties acknowledge that the gallonage in the expanded plant to be reserved and paid for by the schedule G entities is an estimate based on design flows presently contemplated for the lands to be connected to the expanded plant. The parties further acknowledge that it would be impractical and unacceptable to provide for any refund mechanism for gallonage not actually used or to permit any entity connecting to the expanded plant to use more gallonage than initially reserved and paid for by such entity. In order, however, to minimize any hardship to a connecting entity resulting from an erroneous current estimate of the gallonage required by such entity, any of the connecting schedule G entities may elect that they're respective options and subject to the prior written approval of the agency which approval shall not be unreasonably withheld to pursue one or more of the following courses of action for a period of five years after the substantial completion of the expansion of the plant as approved by DPW," and one is, "Assign any reserved and paid for capacity to any other connecting entity that is a member of contractor."

The resolution of the agency which approved this back in 1997 also provided a list of the connecting entities and the gallonage and it said, "As to be adjusted among the various entities for the reason that you can't always calculate exactly to be approved by the agency staff." That's why I don't want to get into a battle but I respectfully disagree with the Commissioner that transfers of gallonage and further connections resulting there on require any more than approval of the Sewer Agency and its staff.

LEG. CRECCA:

And -- I mean, I just want to add, too, it doesn't sound like -- I mean, we're getting what we bargained for in the first place which was "X" number of gallons, you know, "X" improvements for "X" number of gallons with these members. And I understand your point, Legislator Caracappa, and I can't say that I don't understand it, but in the same respect too, I don't see where -- the County entered into this agreement in '97, I think we're bound by it and I don't see where the harm is to us with an exchange between members, especially given the language that I just heard.

CHAIRMAN CARACAPPA:

Did you hear in the language, though -- I'm sorry to cut you off -- that to be written consent or approved by the agency?

LEG. CRECCA:

Yeah.

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CHAIRMAN CARACAPPA:

Which did not happen.

LEG. CRECCA:

But if the Sewer Agency -- and this is a question for Commissioner Bartha or Mr. Wright. If the Sewer Agency approved this hook-up, aren't they in turn approving the transfer which took place in order to allow this hook-up to occur?

COMMISSIONER BARTHA:

You're asking -- that was my understanding. But it was also my understand all along and everyone on the sewer agency that this would come to the Legislature for consideration.

LEG. CRECCA:

What would, the hook-up?

COMMISSIONER BARTHA:

The connection of this particular entity to the Sewer District.

LEG. CRECCA:

Well, it is before us now.

COMMISSIONER BARTHA:

Yeah, right.

LEG. CRECCA:

Oh, okay.

COMMISSIONER BARTHA:

Mr. Wishod is arguing it's not necessary for it to be.

LEG. CRECCA:

Oh, I absolutely don't agree with that aspect, Legislator Caracappa.

CHAIRMAN CARACAPPA:

We're talking about the transfer of gallonage.

LEG. CRECCA:

Absolutely, every sewer agreement hook-up has to come back to us, so

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disagree with that, too. So I think it has to, I think we contractually are bound by our 1997 agreement and all that, but I still think this has to come back to us for a hook-up, I understand what you're saying. In other words, you're not saying that you think that we have to approve the transfer of the gallonage within the consortium, are you?

COMMISSIONER BARTHA:

The Legislature may not have to approve that.

LEG. CARPENTER:

The Sewer Agency.

LEG. CRECCA:

The Sewer Agency does.

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COMMISSIONER BARTHA:

The Sewer Agency and the department.

CHAIRMAN CARACAPPA:

Which I don't believe in the resolution at the Sewer Agency that we passed, it was not written in there to exchange the gallonage; correct, Mr. Wright? It did not say that in the resolution. We spoke about it on the record, it was not -- and I raised objections and I think one or other two other members may have, but it's not written in the resolution and it was not voted on by the sewer agency.

Any other questions? Thank you, gentlemen. Being no other cards, we'll go right to the agenda.

#### Tabled Resolutions

1504-02 (P) - A Local Law to reform process for Public Works Change-orders (Towle). Motion to table by myself, second by Legislator Foley. All in favor? Opposed? Tabled (VOTE: 5-0-0-0).

1700-02 (P) - Revising and clarifying use of Capital Project priority ranking system for implementation of Capital Budget & Program projects (Caracappa). I'm meeting with the Commissioner on Wednesday to finalize the new format we'll have for the Legislature regarding Capital Budget -- rather Capital Project tracking and we'll have a presentation at the next Public Works meeting on that. So that's a motion to table by myself, second by Legislator Foley. All in favor? Opposed? Tabled (VOTE: 5-0-0-0).

1765-02 (P) - Transferring escrow account revenues and transferring

assessment stabilization reserve funds to the Capital Fund, amending the 2002 Operating Budget, amending the 2002 Capital Budget & Program and appropriating funds for improvements to the facilities in Suffolk County Sewer District No. 18 - Hauppauge Industrial (CP 8126) (County Executive).

LEG. CRECCA:

I think we're still -- we still haven't sat down and worked this out with -- I'm looking at 1765 which is District 18?

COMMISSIONER BARTHA:

Right, we would like to see that tabled.

LEG. CRECCA:

Yeah, okay. I think that was -- they're doing some work on that.

CHAIRMAN CARACAPPA:

Motion to table by Legislator Crecca, seconded by myself. All in favor? Opposed? Tabled (VOTE: 5-0-0-0).

### Introductory Resolutions

1961-02 (P) - Authorizing execution of an agreement by the Administrative Head of Suffolk County Sewer District No. 11 - Selden with the developer of Fairfield at Pinewood (County Executive). Motion to table by myself. Is there a second?

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LEG. BISHOP:

Second? No, no.

CHAIRMAN CARACAPPA:

No second to table?

LEG. CARPENTER:

I will second it.

CHAIRMAN CARACAPPA:

Second by Legislator Carpenter. All in favor?

LEG. FOLEY:

For the purpose of tabling, I will agree to one cycle if there were questions that were raised today that you feel need to be answered and haven't been let's say well enough explained, so I will agree to tabling for one cycle to try to answer some of the questions that were raised today.

CHAIRMAN CARACAPPA:



Okay. On the motion myself, you heard it from Public Works themselves just now, it's supposed to be voted on by the Sewer Agency, this transfer of gallonage, it was not. And here we are bypassing that whole process and giving approval; that is -- it borders on criminal in my view. All in favor? Opposed?

LEG. CRECCA:  
Opposed.

LEG. BISHOP:  
Opposed.

CHAIRMAN CARACAPPA:  
Two opposed. The motion is tabled (VOTE: 3-2-0-0 Opposed:  
Legislators  
Bishop & Crecca).

1976 --

LEG. CRECCA:  
Can I ask -- I'm sorry. Can I just ask the Commissioner one question?

CHAIRMAN CARACAPPA:  
Yes.

LEG. CRECCA:  
Does the Sewer Agency meet between now and our next meeting which  
is  
October 8th?

CHAIRMAN CARACAPPA:  
Wednesday.

COMMISSIONER BARTHA:  
Yes, it meets next Wednesday.

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LEG. CRECCA:  
Can we -- if we could have this addressed there if you believe that's not -- I'm not telling you what to do but, I mean, obviously if Legislator Caracappa has raised these concerns, possibly we could have that addressed at the Sewer Agency?

LEG. FOLEY:  
When is the next regular committee meeting here?

LEG. CRECCA:  
October 8th

LEG. FOLEY:

No, no, of the regular -- two weeks from today?

LEG. CRECCA:

Three weeks.

LEG. FOLEY:

Three weeks from today, October 2nd.

LEG. CRECCA:

That's what I said; no, I'm kidding. I know, I said October 8th, I apologize.

CHAIRMAN CARACAPPA:

Okay, motion is tabled (VOTE: 3-2-0-0 Opposed: Legislators Bishop & Crecca).

1976-02 (P) - Amending Resolution Nos. 1306 of 1996 and 778 of 2000 for participation in engineering in connection with the reconstruction of CR 67, Long Island Motor Parkway at LIE Exit 55, Town of Islip (CP 5172.110) (County Executive). Motion by Legislator Crecca?

LEG. CARPENTER:

Second.

LEG. CRECCA:

Yes, that's fine.

CHAIRMAN CARACAPPA:

Second by Legislator Carpenter, it's Islip. All in favor? Opposed? Abstained? It's approved (VOTE: 5-0-0-0).

1989-02 (P) - Amending the 2002 Capital Budget & Program and appropriating funds in connection with emergency dredging of Stony Brook Harbor (CP 5200.429) (Crecca). Motion to table by Legislator Crecca, seconded by Legislator Foley. All in favor? Opposed? Abstained? It's tabled (VOTE: 5-0-0-0).

Any other business to come before the committee? Hearing none, we are adjourned.

(\*The meeting was adjourned at 1:09 P.M.\*)

{ } - Denotes spelled Phonetically